Chapter 2

Our Investigation Procedures

Complaint Handling

Modes of Complaint

2.1 Complaints may be lodged in person, by letter, by post or by fax, or on our postage-free complaint form. They may also be made by telephone for simple initial cases involving not more than two organisations.

Fig. 2.1 Complaint loged in person

2.2 We also accept complaints via e-mail. However, for security of the information, they must be digitally signed under proper electronic certification. Otherwise, we have to respond by post to guard against disclosure, as we are required by law to maintain stringent secrecy under penalty of a fine and imprisonment.

Topical Complaints

2.3 From time to time, we receive complaints from more than one person, more or less concurrently, about a particular social issue or current topic relating essentially to the same action or decision by the organisation(s) concerned. We term such cases "topical complaints" (previously known as "serial complaints") to distinguish them from complaint cases on disparate issues or topics, so as to more accurately reflect our caseload and the frequency of complaint against different organisations.

Assessment

2.4 Our Assessment Team screens all incoming complaints to ascertain whether they come within the statutory purview of The Ombudsman and whether they have a *prima facie* case to warrant investigation. Essential information includes the organisation(s) and the matter under complaint, basic details of time and persons involved as well as grounds for grievance.

Fig. 2.2 Assessment Team

2.5 Where The Ombudsman decides not to pursue a case, we aim to notify complainants of the reasons within 15 working days (see **Annex 3** for our performance pledges). Even with complaints "screened out" because the complainants are anonymous or unidentifiable, we do not discard them but examine them for any pattern of systemic or systematic maladministration. This may prompt topics for direct investigation (see **paras. 2.17 – 2.22**).

2.6 Some complaints may be "screened out" by The Ombudsman because there is no *prima facie* evidence of maladministration. However, as the complainants may be in need of services from some Government departments or public bodies, we take it upon ourselves to advise them where and how to get such services, as if we were social workers or counsellors.

2.7 On appeal by complainants of "screened-out" cases, the Assessment Team will, as appropriate, "re-assess" such cases and "re-open" them; or with The Ombudsman's approval, screen out the cases again.

2.8 Complaints "screened in" go to one of our five investigation teams for preliminary inquiries, resolution by mediation, or full investigation.

Fig. 2.3

Preliminary Inquiries	
Type	**Method**
INCH	With the complainant's consent, a relatively simple case is referred to the organisation concerned for investigation and reply direct to the complainant, with a copy to us. The Ombudsman may request specific information from the organisation, monitors progress and scrutinises the reply. Where it is not satisfactory, we may take up the case for RAC or even full investigation.
RAC	The Office collects key facts relating to the case. If the matter can be fairly and fully explained, we will present the findings with observations to the complainant and make suggestions to the organisation concerned for remedy and improvement where necessary. If further inquiries are called for, we may conduct a full investigation (see **para. 2.12**).

Preliminary Inquiries

2.9 We often conduct preliminary inquiries before determining whether a full investigation is necessary. Such inquiries may come under our Internal Complaint Handling Programme ("INCH") or take the form of Rendering Assistance/Clarification ("RAC"), as outlined in **Fig. 2.3**.

Mediation

2.10 With the voluntary consent of both the complainant and the organisation concerned, The Ombudsman may try to settle a case by mediation. This alternative method for dispute resolution is suitable for cases involving only minor or no maladministration. The two parties meet to explore a mutually acceptable solution. Our trained investigators act as impartial mediators.

2.11 If mediation fails to resolve the matter, or the complainant requests to reactivate his complaint, our Office will assign another investigator to initiate preliminary inquiries or a full investigation afresh.

Full Investigation

2.12 For complex cases involving issues of principle, serious maladministration, gross injustice, systemic flaws or procedural deficiencies, The Ombudsman will order a full investigation.

2.13 This is an extensive and intensive process of probing for evidence. Apart from examining documents, we may summon witnesses, counter-check data with the complainant and go on site inspections. Where necessary, we will consult members of our Panel of Professional Advisers, who are all experts with good standing in professional fields (see **Annex 4**).

2.14 We will also invite comments on our preliminary observations and views from any organisation or individual that may have been criticised or adversely affected. When finalised, the report will be presented to the complainant for information and to the head(s) of the organisation(s) concerned for implementation of our recommendations.

2.15 In our investigation reports, complaints are classified according to how far the allegations of maladministration are well founded: "substantiated", "partially substantiated" or "not substantiated". In some cases, although the specific allegations in the complaint are not substantiated, other significant acts or aspects of maladministration are identified. These are then classified as "substantiated other than alleged". The different categories of outcome are defined in the **Glossary of Terms** (see **Annex 5**).

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Review

2.16 Complainants dissatisfied with our findings or conclusions may seek a review of their cases. Such requests first go through the original investigator, who will examine the complainant's grounds for review and submit his view to the Chief Investigation Officer of the team. The latter will take a fresh look at the case, focusing on any fresh evidence or new angles before submitting the request to the relevant Assistant Ombudsman for consideration. Replies to the complainants are always scrutinised by the Deputy Ombudsman, before determination by The Ombudsman.

Direct Investigation

2.17 Under the Ordinance, direct investigations ("DIs") in the absence of complaints enable The Ombudsman to review matters of moment at a macro level, as opposed to individual cases. Essentially, this means examining systems with systemic or widespread deficiencies.

Selection of Issues

2.18 A DI may be prompted by significant topical issues of community concern, implementation of new or revised Government policies or repeated complaints of particular matters. These include cases which may have been "screened out" during our assessment process but which show some pattern of systemic problems or systematic maladministration (see **para. 2.5**).

DI Assessment

2.19 Before we formally launch a DI, we may conduct an initial assessment ("DI assessment"). For this purpose, we research public information from annual reports and websites, legislation and media reports, as well as information from the organisation(s) direct. If such assessment points to the need for further study, we will formally notify the head(s) of the organisation(s) and initiate a DI.

2.20 Where our DI assessment finds no significant maladministration or the organisation(s) concerned has made proactive improvement, we will not initiate a DI. We will simply conclude the study as a "mini-DI" and offer our findings to the organisation(s) for comments. Such report outlines the background to the issue, an appraisal of public concern, together with our observations on the role and the action of the organisation(s) concerned. Where appropriate, we make recommendations for improvement.

Investigation Methodology

2.21 The procedures for DI are akin to those for investigation into individual complaints. Unlike the latter, however, it is our established practice to declare publicly our initiation of DIs and openly invite views from relevant sectors and experts as well as the community at large. Findings are then announced at media conferences. This is justified as the subjects are invariably of public interest. Such reports form part of the library stock in our Resource Centre (see **Chapter 6**).

2.22 In the course of our investigation, we often meet with senior officers of the organisation(s) to discuss face-to-face our preliminary findings. Such exchanges are useful in clarifying points for possible incorporation into our report and furthering better insight into the issues.

Implementation of Recommendations

2.23 In all our reports, whether on complaint investigation or DI, our recommendations to the organisation(s) concerned aim to make for more open and client-oriented service, transparent and accountable administration, more efficient processes and effective practices. However, where policies are found outdated or inequitable, The Ombudsman will offer comments, even though they are generally not matters for our investigation.

2.24 Heads of organisations have a duty to report at regular intervals their progress of implementation. We will monitor and keep track by correspondence.

2.25 Unlike Court verdicts, The Ombudsman's recommendations are not binding. Nevertheless, where an organisation refuses to accept any of such recommendations, The Ombudsman may submit a report to the Chief Executive of the Hong Kong Special Administrative Region. Similarly, where an organisation fails to implement or to act adequately on any recommendation, The Ombudsman may report to the Chief Executive. In such event, the Ordinance requires that a copy of the report be laid before the Legislative Council within one month or such longer period as the Chief Executive may determine.

Secrecy Requirement and Publication of Reports

2.26 The Ombudsman, staff and Advisers are all bound by law, under penalty of a fine and imprisonment, to maintain secrecy on all matters that come to our knowledge in the exercise and execution of our functions. This is to ensure that any person or organisation providing information to our Office can do so without reserve or fear of reprisal from the disclosure of their identity or related data.

2.27 In this connection, it is our firmly established practice not to respond to any enquiry from third parties on individual complaints. However, The Ombudsman may publish anonymised reports on complaint investigation, where it is in the public interest to do so.

Essence of Our Investigation

2.28 Our object in investigation is to establish the facts of a case and, where appropriate, enhance the quality of public administration. We do not conduct witch-hunt or criticise regardless. We inquire without fear or favour, bias or prejudice. We aim for fair and impartial conclusion of a case.